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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 ANTHONY BRANDEL,

11 Defendant.

Case No. 2:13-cr-0439-KJD-VCF

ORDER

12 Before the Court is Anthony Brandel's Motion to Stay Sentencing and Judgment of
13 Conviction (ECF No. 451) and his Motion for Writ of Habeas Corpus (ECF No. 452). The
14 government responded to both motions (ECF Nos. 461, 462), and Brandel replied (ECF No.
15 478). Brandel's motions effectively ask the Court to consider his habeas petition before it
16 sentences or otherwise enforces the judgment against him. The Court construes Brandel's pro se
17 filings liberally and in his favor. Erickson v. Pardus, 551 U.S. 89, 94 (2007). Despite that leeway,
18 Brandel is still "bound by the rules of procedure." Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.
19 1995).

20 As the government points out, the Court has already entered judgment against Brandel
21 (Judgment, ECF No. 454). Therefore, inasmuch as Brandel's motion seeks to stay entry of
22 judgment, his motion is moot.

23 Alternatively, Brandel seeks a stay of judgment to prove his actual innocence. Brandel
24 does not warrant a stay of the judgment of conviction. It is within the Court's discretion to stay a
25 judgment pending appellate or habeas review. See Nken v. Holder, 556 U.S. 418, 425–26 (2009).
26 Whether a stay is appropriate depends on four factors: (1) the petitioner's likelihood of success
27 on the merits of its claim; (2) the risk of irreparable injury to the petitioner absent the stay; (3)
28 the risk of injury to other interested parties; and (4) the public policy interest in the stay. Hilton

1 v. Braunskill, 481 U.S. 770, 776 (1987).

2 Brandel seems to suggest that a stay of the judgment of conviction would allow him to
3 pursue habeas relief before his direct appeal. See Motion to Stay 1, ECF No. 452 (Brandel
4 arguing that his appeal “would not be considered pending . . . so long as this Court grants [the]
5 Motion to Stay”)(internal quotations omitted). However, the Ninth Circuit is clear that a federal
6 defendant must fully exhaust his appellate review before seeking habeas relief. See United States
7 v. Lafromboise, 427 F.3d 680, 686 (9th Cir. 2005). In fact, the Court lacks authority over a
8 defendant’s habeas petition and “will not review [such a] motion until the direct appeal is
9 resolved.” United States v. Pirro, 104 F.3d 297, 298 (9th Cir. 1997). A brief review of the docket
10 in this case makes clear that Brandel’s direct appeal is ongoing. Accordingly, Brandel’s habeas
11 petition is untimely, and the Court will not consider the motion until he has exhausted his direct
12 appeal.

13 Accordingly, IT IS HEREBY ORDERED that Anthony Brandel’s Motion to Stay
14 Sentencing and Judgment of Conviction (ECF No. 451) is **DENIED as moot**.

15 IT IS FURTHER ORDERED that Brandel’s Motion for Writ of Habeas Corpus (ECF No.
16 452) is **DENIED without prejudice** as premature.

17 DATED this 14th day of April, 2020.

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21 Kent J. Dawson
22 United States District Judge
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